

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1801 Violation of Probation or Community Control
SPONSOR(S): Committee on Judiciary and Rep. Kottkamp
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 0 N	Jaroslav	Havlicak
2) Public Safety & Crime Prevention		Maynard	De La Paz
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

This bill first defines a “forcible felony violator” as a person who is on probation for, or was previously convicted of, a forcible felony as defined elsewhere in current law, or who has committed a forcible felony as so defined and is being prosecuted for that offense as a violation of another probation or community control.

This bill then provides that upon arrest, a forcible felony violator is not eligible for bail, unless the violation of probation or community control involved is based solely on failure to pay costs, fines or restitution; in the case of an alleged violation arising from any other ground, a forcible felony violator must remain in custody pending resolution of the violation hearing.

Under this bill, if the court finds that the forcible felony violator has committed the violation or violations of probation or community control alleged, this bill then requires the court to conduct a “danger to the community hearing” to determine whether releasing the violator, whether or not on probation, poses a danger to the community. If the court finds, by a preponderance of the evidence, that the violator poses a danger, the court must then sentence the violator to the greater of either the sentence arrived at through the use of the Criminal Punishment Code scoring matrix, or a term of no less than five years. Only if the court finds by a preponderance of the evidence that the violator poses no danger to the community may the court impose any other sentence. Such a finding of non-danger must be in writing and signed by the court.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1801b.ps.doc
DATE: March 25, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 948 of the Florida Statutes governs probation and community control. Section 948.001(2), F.S., defines “community control” as:

a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

Section 948.001(5), F.S., defines “probation” as:

a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03.

Florida courts are currently authorized by statute to sentence any defendant to probation or community control except for one charged with a crime punishable by death, pursuant to conviction by a jury, conviction by the judge in a bench trial, or a plea of either guilty or *nolo contendere*.¹ Such a sentence may be imposed with or without formal adjudication of guilt.² A court may also split a defendant’s sentence between incarceration and probation or community control.³ However, a defendant may only be placed on probation rather than in community control if the current conviction (or withhold of adjudication), or any previous conviction (or withhold of adjudication) is for a “forcible felony,” which s. 776.08, F.S., defines to mean:

treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

Notwithstanding this definition, for the purpose of determining whether a defendant may be placed in community control rather than probation, manslaughter and robbery do not count as “forcible felonies.”⁴

¹ See s. 948.01(1), F.S.

² See *id.*

³ See ss. 948.01(6) and 948.01(11), F.S.

⁴ See s. 948.01(8), F.S.

Section 948.03, F.S., provides an extensive list of terms of probation or community control any or all of which a court may impose, as well as a number of mandatory terms that the court must impose as standard conditions for those placed on probation or community control for certain sex crimes. Under s. 948.06, F.S., whenever there are reasonable grounds to believe that a probationer or offender in community control ("offender") has violated the terms imposed by the court in a material respect, they may be arrested without warrant by any law enforcement officer aware of their status as a probationer or offender, and returned to the court that imposed that sentence; moreover, upon affidavit from law enforcement stating reasonable cause to believe terms are being violated, the court may issue a bench warrant for the probationer or offender's arrest.⁵

Once brought before the court for an alleged violation of probation or community control, the probationer or offender is advised of the charge of violation against them.⁶ If the charge is admitted to, the court may immediately revoke, modify or continue the probation or community control.⁷ If the charge is not admitted to, the court may commit the probationer or offender to custody or release him or her with or without bail pending final determination of a violation hearing.⁸ If the court determines there has been a violation, it may then revoke, modify or continue the probation or community control.⁹

Proposed Changes

This bill creates a new subsection (8) within s. 948.06, F.S., the section governing the process of determining violation of probation or community control. This new subsection first defines a "forcible felony violator" as a person who is on probation for, or was previously convicted of, a forcible felony as defined in s. 776.08, F.S., or who has committed a forcible felony as so defined and is being prosecuted for that offense as a violation of another probation or community control.

The new subsection then provides that upon arrest, a forcible felony violator is not eligible for bail, unless the violation involved is based solely on failure to pay costs, fines or restitution; in the case of an alleged violation arising from any other ground, a forcible felony violator must remain in custody pending resolution of the violation hearing.

If the court finds that the forcible felony violator has committed the violation or violations alleged, this bill then requires the court to conduct a "danger to the community hearing" to determine whether releasing the violator, whether or not on probation, poses a danger to the community. If the court finds, by a preponderance of the evidence, that the violator poses a danger, the court must then sentence the violator to the greater of either the sentence arrived at through the use of the Criminal Punishment Code scoring matrix, or a term of no less than five years. Only if the court finds by a preponderance of the evidence that the violator poses no danger to the community may the court impose any other sentence. Such a finding of non-danger must be in writing and signed by the court.

C. SECTION DIRECTORY:

Section 1. Creates s. 948.06(8), F.S., defining "forcible felony violators" and establishing requirements with respect to violation of probation or community control by such forcible felony violators.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁵ See s. 948.06(1), F.S.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

1. Revenues:

None.

2. Expenditures:

By requiring more probation violators to be held in custody, either prior to their violation hearing or pursuant to their sentence, this bill could impose significant costs on the Department of Corrections. The fiscal impact is uncertain.

The hearings required by this bill could impose additional time and other costs on the courts, the state attorneys, and the public defenders. The fiscal impact, if any, is uncertain.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By requiring more probation violators to be held in custody, either prior to their violation hearing or pursuant to their sentence, this bill could impose significant costs on the county jails. The extent of such costs is indeterminate since it is unclear the extent to which the bill will increase the numbers of probation violators held without bail.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Although not expressly stated, this bill's requirement for hearings presumably authorizes the Supreme Court to promulgate procedural rules governing the conduct of those hearings.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill's definition of "forcible felony violator" applies only to those on probation, not on community control, which is inconsistent with its other provisions.

In addition, some terms and phrases in the bill are unclear. For example, the bill provides that forcible felony offenders who violate probation must be held in custody pending the probation or community control violation hearing. A court must hold the hearing, unless the forcible felony violator admits the violation, "at which time both the forcible felony violator and the State shall have an opportunity to be heard and present witnesses." It is unclear what evidence is to be heard by the court at this point in the proceedings described by the bill. Presumably, the court could have a sentencing hearing to resolve the violation.

In addition, the bill provides that after having a "danger to the community hearing," if the court determines by a preponderance of the evidence that a forcible felony violator poses a danger to the community, "the court shall sentence him or her to the greater sanction of: 1) the sentence arrived at through the use of the Criminal Punishment Code scoring matrix, or 2) a prison term at no less than five years." There is no statutory provision for a "Criminal Punishment Code scoring matrix." Assuming the provision is intended to reference the "sentencing guidelines worksheet" referenced in s. 921.0014, F.S., a problem may arise from the lack of clarity of the term "greater sanction of the sentence arrived at through the use of the" sentencing guidelines worksheet. Because the sentencing guidelines worksheets indicate a range of penalties, with the maximum penalty constituting the highest sentence which may be imposed by law, it could be argued that the "greater sanction arrived at by the sentencing code" would be the maximum sentence. Under this interpretation, every time a potential sentence indicated by the sentencing guidelines worksheet exceeds five year, the maximum penalty for the offense must be imposed.

Finally, the bill provides no definition of the term "danger to the community" or factors in determining whether a particular offender poses such a danger to guide the court in making this determination.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES